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SUPREME COURT, U. S.

In The

Supreme Court of the United States

October Term, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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Defendants

MOTION FOR LEAVE TO FILE COMPLAINT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Pennsylvania, by its Attorney General, William C. Sennett, respectfully asks leave of the Court to file against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union

Telegraph Company, a New York corporation, the Complaint which is submitted herewith.

WILLIAM C. SENNETT
Attorney General of Pennsylvania
JOSEPH H. RESNICK
Assistant Attorney General
Attorneys for Plaintiff, Commonwealth of Pennsylvania

MICHAEL EDELMAN
Of Counsel

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

COMPLAINT

The Commonwealth of Pennsylvania, plaintiff, by William C. Sennett, its Attorney General, brings this original action against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, defendants, and alleges as follows:

I.

1. The plaintiff, the Commonwealth of Pennsylvania, and the defendants, the State of New York, the State of Florida, the State of Oregon, and the

II.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

9. The procedure observed by Western Union in its telegraphic money order service is as follows:

a. The sender fills out a money order form at a Western Union sending office in the State or place of origin and gives it to the company's clerk, together with the money to be sent and the company's charges for sending it. A copy of a typical money order form is hereto attached, marked "Exhibit A".

All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender, a typical form of which is hereto attached, marked "Exhibit B".

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address

Commonwealth of Virginia are States of the United States.

2. The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York.

3. This is a civil controversy (a) between two or more States of the United States, and (b) between Western Union and States other than its State of incorporation, and is, therefore, within the original jurisdiction of the Supreme Court of the United States, under Article III, Section 2 of the Constitution of the United States, and of the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

4. Western Union is joined as a party defendant because the subject-matter in controversy consists of moneys received by the company for telegraphic money orders, and the judgment prayed for will necessarily include an order directing the company to pay the amounts so received, or a portion or portions thereof, to one or more of the States named herein as parties, or to a State or States not named as parties, but which may, with the permission of the Court, intervene as a party or parties.

5. New York, Florida, Oregon and Virginia are the only States named as defendants herein, because they are the only States which, according to plaintiff's knowledge, are asserting rights which may be contrary to the claims of Pennsylvania. However, there

are potential claims of other States, not only with regard to the specific portion of moneys claimed by Pennsylvania out of amounts received by Western Union for money orders, but also with regard to any other portion thereof not claimed by Pennsylvania.

The plaintiff will, therefore, not only make service on the defendants, but will, upon the filing of this Complaint, also mail a copy of the Motion for Leave To File Complaint and Brief in Support of Motion and of this Complaint, to each of the States not named herein as defendant, in order that any other State desiring to assert a claim to any moneys received by Western Union for money orders may seek leave of this Court to intervene in these proceedings.

6. Western Union is, and was during the period here involved, authorized to do business in most of the States of the United States and in the District of Columbia, and, prior to divestment of its international operations on September 20, 1963, it was also authorized to do business in certain foreign countries.

On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc. and operating and sales subsidiary companies, and, in so merging, Western Union assumed the obligations of Postal-Telegraph, Inc. and subsidiary companies. To the extent telegraphic money orders of the predecessor companies resulted in obligations which were assumed by Western Union and are involved in this action, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

II.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

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All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender, a typical form of which is hereto attached, marked "Exhibit B".

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address

shown in the money order, directing the paying office to pay the money to the sendee.

The money received at the sending office for the money order is not sent to the paying office, but remains at the sending office and is intermingled with moneys collected there for telegrams and other receipts. The intermingled moneys are used for the purpose of paying any incoming money orders and other authorized expenditures of the sending office. Accumulation of surplus cash, if any, is deposited in a local bank account in the name of Western Union. Accumulation of excess funds, if any, in the local bank account is remitted to a Divisional Headquarters Cashier, who, in turn, remits to the company Treasurer.

d. In most cases, the sendee is notified by the paying office that a telegraphic money order has been received for the payment of money to him, and to call at the paying office, the address of which is given, to receive the money. A typical form of such notice is hereto attached, marked "Exhibit C".

In some cases, where the sendee is otherwise aware of the money order, notice may not be sent to him. In some cases the company attempts to give such notice, but is unsuccessful in the attempt.

e. Upon identifying himself at the paying office, the sendee is given a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future

use. A typical form of draft is hereto attached marked "Exhibit D".

In some instances, the sendee does not call for the draft, but, by request of the sender or sendee, it is sent to the sendee.

f. If the sendee cannot be located, or if, after notice, he fails to call for the draft, or if, for any other reason, the company is unable to issue a draft to the sendee, then, after 72 hours (or other period specified by the conditions of the money order), the money order is cancelled by the paying office notifying the sending office that payment has not been effected, and, under the conditions printed on the money order, refund to the sender is required. Once the money order is canceled because of the expiration of the specified period, the company will not later issue a draft to the sendee or otherwise recognize any right in the sendee under the money order.

g. The sending office then notifies the sender that payment to the sendee could not be effected, and that the company will make refund to the sender.

h. The sender may present himself at the sending office and receive a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use. A typical form of draft for refund is hereto attached, marked "Exhibit E".

In some instances, the sender does not call for the draft, but at the sender's request, it is sent to him.

If the sender cashes the draft, it is paid from moneys collected at the sending office for telegrams, money orders and other receipts, and the clerk at that office takes credit for the amount so paid to the sender. In the event that this amount is not sufficient, the manager draws the amount necessary from the local bank account, and in turn, if that account is not sufficient, the manager receives a check from the divisional headquarters cashier to meet such deficit.

i. Where the company has issued a draft, either to the sendee for the amount of the money order, or to the sender for the refund, and the draft is not immediately cashed, the Company holds the amount to be paid until the draft is presented by the payee or his transferee, and, upon such presentation, pays the amount of the draft.

10. Usually, the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

11. In those instances in which the sendee has received a draft, but the draft has not been presented for payment, Western Union presently holds the moneys, awaiting presentation of the draft.

12. In those instances in which Western Union has been unable to deliver a draft to the sendee, the company has canceled the money order, and where it has been able to do so, has made refund to the sender.

13. Usually, the refund has been accomplished; the sender has received a draft for the refund and has cashed it.

14. In those instances in which the sender has received a draft for the refund, but the draft has not been presented for payment, Western Union presently holds the money, awaiting presentation of the draft.

15. In those instances in which the money order has been canceled, but Western Union has been unable to deliver a draft to the sender for the refund, Western Union presently holds the money awaiting the sender's request for the refund.

III.

16. In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than 17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed that as to 78.1% of the aggregate amount of the money orders examined, the company had not been able to effect payment and the money orders had been canceled, but that the company had not been able to make refund to the senders or to deliver drafts to them.

As to the other 21.9% of the amount of the money orders examined, drafts had been issued either to sendees or to senders. The survey did not show what portion of the 21.9% represented money orders as

to which drafts had been delivered to the sendees, and what portion represented money orders as to which drafts had not been delivered to the sendees, but to the senders for refunds.

IV.

17. The present proceeding relates to moneys presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

18. In excess of $1,500,000.00 is still held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

19. Of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in Pennsylvania.

20. The said sum of approximately $100,000.00 has been unclaimed for more than seven years by the persons thereto entitled.

21. The said sum of $100,000.00 is subject to escheat or custodial taking by the Commonwealth of Pennsylvania under the provisions of its laws.

The Act of Assembly of the Commonwealth of Pennsylvania approved May 2, 1889, P. L. 66, Sec. 3, as amended by the Act of July 29, 1953, P. L. 986, Sec. 1, Purdon's Pennsylvania Statutes, Vol. 27, Sec. 333, provides for escheat.

Under the Pennsylvania Fiscal Code, Act of April 9, 1929, P. L. 343, Sec. 1310, Purdon's Pennsylvania Statutes, Vol. 72, Sec. 1310, Pennsylvania may, in-

stead of instituting proceedings for the escheat of such property, take custody thereof without escheat, subject to the property or part thereof being refunded to any claimant or claimants establishing the right thereto.

A copy of such statutes is set forth in "Exhibit F" hereto attached.

22. Beginning in 1953, after the adoption of the Act of July 29, 1953, P. L. 986, and continuing to the present time, Pennsylvania has sought the escheat or custody of moneys held by Western Union on account of money orders purchased from the Company in Pennsylvania and unclaimed for the period of seven years by the persons thereto entitled.

23. In an action instituted in 1953 by the Commonwealth of Pennsylvania against Western Union, and affirmed in Gottlieb, Escheator v. Western Union Telegraph Company, 400 Pa. 337, it was held that Pennsylvania, as the State of origin of money orders as to which moneys held by Western Union were unclaimed for seven years, was entitled to the escheat or custody of such moneys. Upon appeal to the U. S. Supreme Court, the judgment of the Pennsylvania Court was reversed in Western Union Telegraph Company v. Pa., 368 U.S. 71, because of the potential claims of other States to the same intangibles, and because the Pennsylvania judgment could not protect Western Union from such potential claims of other States.

24. The plaintiff is informed that Florida asserts that under its laws, it is entitled to the custody of

such money if Florida was the state of destination of the money orders. As to money orders of which Pennsylvania was the State of origin and Florida was the State of destination, there is a controversy between Pennsylvania and Florida.

25. The plaintiff is informed that Oregon asserts that under its laws, the sendee of a money order is the donee beneficiary or creditor beneficiary of the money order even though no drafts were issued, and that as to money orders to a sendee in Oregon, it is the State entitled to the custody of such moneys. As to money orders of which Pennsylvania was the State of origin and Oregon was the State of destination, there is, therefore, a controversy between Pennsylvania and Oregon.

26. The plaintiff is informed that Virginia claims that where a draft was issued to a sendee in Virginia, that State is entitled to the custody of such moneys. As to money orders of which Pennsylvania was the State of origin, and drafts were issued to sendees in Virginia, there is, therefore, a controversy between Pennsylvania and Virginia.

27. The plaintiff is informed that under the New York Abandoned Property Law, Sec. 1309, as amended in 1969 ("Exhibit G" hereto attached), New York claims all moneys arising from money orders purchased from January 1, 1930 to January 1, 1958, without reference to any fact other than the purchase of the money order during such period. Neither the State of origin, the State of destination, nor the State in which a draft was issued, is recognized by New York as having any claim to such mon-

eys. Under the said statute, New York also claims as to money orders purchased from Western Union on or after January 1, 1958, (a) where the last known address of the purchaser is in New York, whether or not a draft has been issued; (b) where no address is shown on the records of Western Union and a draft was issued in New York; and (c) if no address is shown on the records of Western Union and no draft was issued.

By reason of New York's claim as to money orders purchased before January 1, 1958, there is, therefore, a controversy between New York and Pennsylvania as to money orders purchased in Pennsylvania, and where a State claims as the State of destination, or the State where a draft was issued, the controversy also includes such State or States.

By reason of New York's claim as to money orders purchased on or after January 1, 1958, in those cases where the address of the purchaser is not shown on Western Union's records, but the State of origin is shown on such records as being in Pennsylvania, there is a controversy between New York and Pennsylvania, and where the moneys are claimed by the State of destination, or the State where a draft was issued, the controversy also includes such State or States.

28. Western Union's books and records show the State or place of origin of every money order, as well as the State or place of destination of every money order. In many cases, its books and records do not show the address of the sender; likewise, in many cases, its books and records do not show the address of the sendee; and in many cases, its books and records

do not show the address of the payee of the draft issued by the Company.

29. No judgment of a Pennsylvania Court could be binding upon any other claimant State unless such other State were a party to the proceeding in the Pennsylvania court, and a Pennsylvania court cannot make any other State a party, without the consent of the latter State. If Pennsylvania were to intervene in a proceeding in a court of another State and obtain judgment, such judgment would not bind any other claimant States which did not intervene.

If actions were brought in the various States against Western Union for the same moneys, the decisions of their courts, under their respective laws and conflicts of law rules, might be inconsistent.

30. As to 78.1% of the sum of approximately $100,000.00 held by Western Union arising out of money orders of which Pennsylvania was the State of origin and as to which no drafts were issued, then Pennsylvania, the State of origin, claims such amounts, and the controversy is, therefore, between three states, (1) Pennsylvania as the State of origin, (2) the State of destination, if other than Pennsylvania, and (3) the State of New York, in which Western Union was incorporated.

As to the 21.9%

(1) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of origin of the money orders for the said 21.9%

is entitled to such moneys, then, Pennsylvania is entitled to such 21.9% of the $100,000.00;

(2) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of destination of the money orders is entitled to such moneys, then, conversely, where it was the State of destination, Pennsylvania is entitled.

31. If it be determined by this Court that the State of destination rather than the State of origin is the State entitled to the escheat or custody of the unclaimed moneys held by Western Union, then Pennsylvania would not be entitled to any part of the said sum of $100,000.00, except where it was both the State of origin and the State of destination. However, under such a ruling, Pennsylvania would be entitled as the State of destination as to unclaimed moneys arising from money orders destined to Pennsylvania. The amount held by Western Union for money orders purchased on or before December 31, 1962 and destined to Pennsylvania is approximately $90,000.00.

32. If it be determined by this Court that issuance of a draft constitutes absolute or conditional payment of a money order or a refund, then as to drafts issued to sendees or senders in Pennsylvania, Pennsylvania is entitled to the moneys held by Western Union for payment of the drafts.

33. Only by a judgment of this Court can it be determined which of the various States are entitled to the moneys held by Western Union, as above set forth.

34. Neither the plaintiff, Pennsylvania, nor the defendant, Western Union, can be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

35. The plaintiff has no adequate remedy at law, and no remedy whatsoever in any other Court.

Wherefore, the plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That the Motion for Leave To File this Complaint be granted;

(3) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(4) That a temporary injunction be issued restraining the defendant, the State of New York, and other States named as defendants herein from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of said property, pending further orders of this Court;

(5) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to the defendant, the State of New York, or to any other State, pending further orders of this Court;

(6) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The State of origin of the money orders, as shown by the books and records of Western Union;

(b) The State of destination of the money orders, as shown by the books and records of Western Union;

(c) The State in which a draft has been issued for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(d) The State of last known address of the sender of a money order, as shown by the books and records of Western Union;

(e) The State of last known address of the sendee of a money order, as shown by the books and records of Western Union;

(f) The State of the last known address of the payee of a draft, as shown by the books and records of Western Union;

(g) The State of domicile of Western Union;

(h) Any other State as to which the facts adduced established such right.

(7) That such judgment decree that no State other than the State or States designated under (6) above has the power of escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(8) That the plaintiff, the Commonwealth of Pennsylvania, have such other and further relief as this Court may deem just.

WILLIAM C. SENNETT
Attorney General of Pennsylvania
JOSEPH H. RESNICK
Assistant Attorney General
Attorneys for Plaintiff
The Commonwealth of Pennvania

MICHAEL EDELMAN
Of Counsel

EXHIBIT A

(Face of Money Order)

20 ½

73 (Rev. 3-60)

A MESSAGE WITH YOUR MONEY ORDER IS ALWAYS WELCOME

WESTERN UNION
TELEGRAPHIC
MONEY ORDER

W. P. MARSHALL, PRESIDENT

THE FASTEST AND SAFEST WAY TO SEND OR RECEIVE MONEY

Send the following Money Order subject to conditions below and on back hereof, which are hereby agreed to:

ACCTG INFO | SENDING DATA

NUMBER | TIME FILED

OFFICE | DATE 19

$ AMT.
$ CHGS.
TOTAL
TAX
TOTAL

MOD

AMOUNT DOLLARS AND CENTS
(PRINT AMOUNT DOLLARS) (FIGURES)

PAY TO (PLEASE PRINT. IF WOMAN, GIVE MRS. OR MISS)

STREET ADDRESS

DESTINATION AND SENDER DESTINATION | NAME OF SENDER

WRITE YOUR MESSAGE HERE ONLY A FEW CENTS PER WORD WILL BE DELIVERED WITH MONEY ORDER

● Unless signed below the Telegraph Company is directed to pay this money order at my risk to such person as its paying agent believes to be the above named payee, personal identification being waived.

SENDER'S FULL NAME

SENDER'S ADDRESS | TELEPHONE NUMBER

Information for test question:

[Back of Money Order]

MONEY ORDERS ARE SUBJECT TO THE FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

ALL MESSAGES INCLUDED IN MONEY ORDERS ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face,

this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the sum of five thousand dollars, at which amount each message is deemed to be valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid, and an additional charge equal to one-tenth of one per cent of the amount by which such valuation shall exceed five thousand dollars.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

5. The transferring of the money and the transmission of the message together constitute one transaction and the cancelation by either the sender or the company of the money order cancels also any obligation on the part of the company to deliver the message. The message will be delivered to the payee of the money order only as and when the money is paid.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing to the company within sixty days after the message is filed with the company for transmission; provided, however, that this condition shall not apply to claims for damages or overcharges within the purview of Section 415 of the Communications Act of 1934.

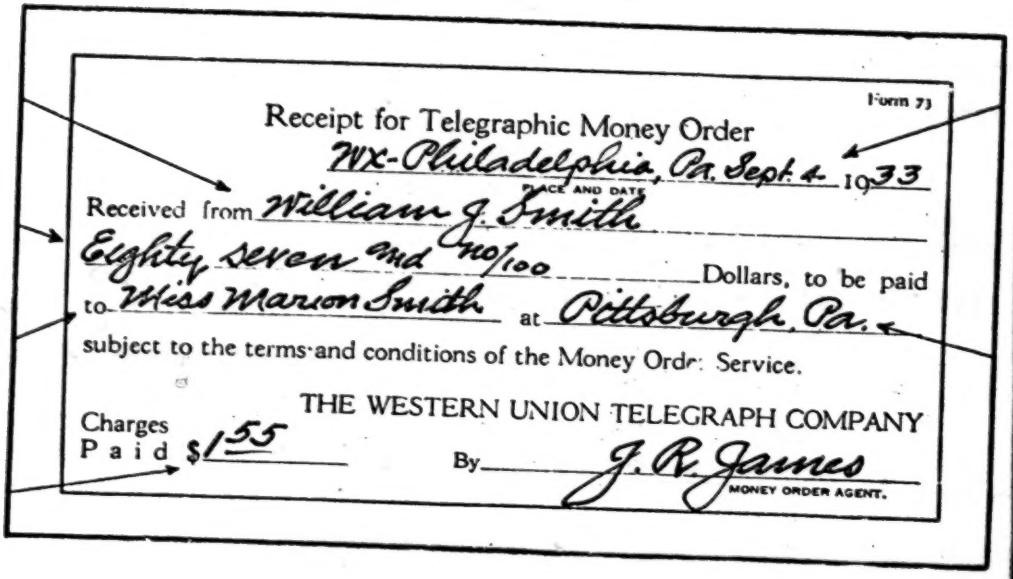
7. It is agreed that in any action by the company to recover the tolls for any message or messages the prompt and correct transmission and delivery thereof shall be presumed, subject to rebuttal by competent evidence.

8. No employee of the company is authorized to vary the foregoing.

The Western Union Telegraph Company
incorporated
R. B. White, President

EXHIBIT B

FIG. 2—SENDER'S RECEIPT—FORM 73



Form 73

Receipt for Telegraphic Money Order

WX-Philadelphia, Pa. Sept 4 1933
PLACE AND DATE

Received from William J. Smith

Eighty seven and no/100 Dollars, to be paid

to Miss Marion Smith at Pittsburgh, Pa.

subject to the terms and conditions of the Money Order Service.

THE WESTERN UNION TELEGRAPH COMPANY

Charges Paid $1.55

By J. R. James
MONEY ORDER AGENT.

EXHIBIT C

Form 75-C

QUICK SERVICE

WESTERN UNION

LOW RATES

MONEY ORDER NOTICE

Money Sent by Telegraph and Cable to All the World

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

B- LOS ANGELES CALIF (OFFICE) SEPT 4TH 1933 (DATE)

No. $ 231

To MRS FRANCES THOMPSON (MR., MRS. OR MISS)

2740 WILSHIRE BLVD (ADDRESS)

We have received a telegraphic money order for you with the following message:

WIRE TRAIN AND TIME ARRIVAL

Will you please call at our office, 3225 WILSHIRE BLVD to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to cancel the order and return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

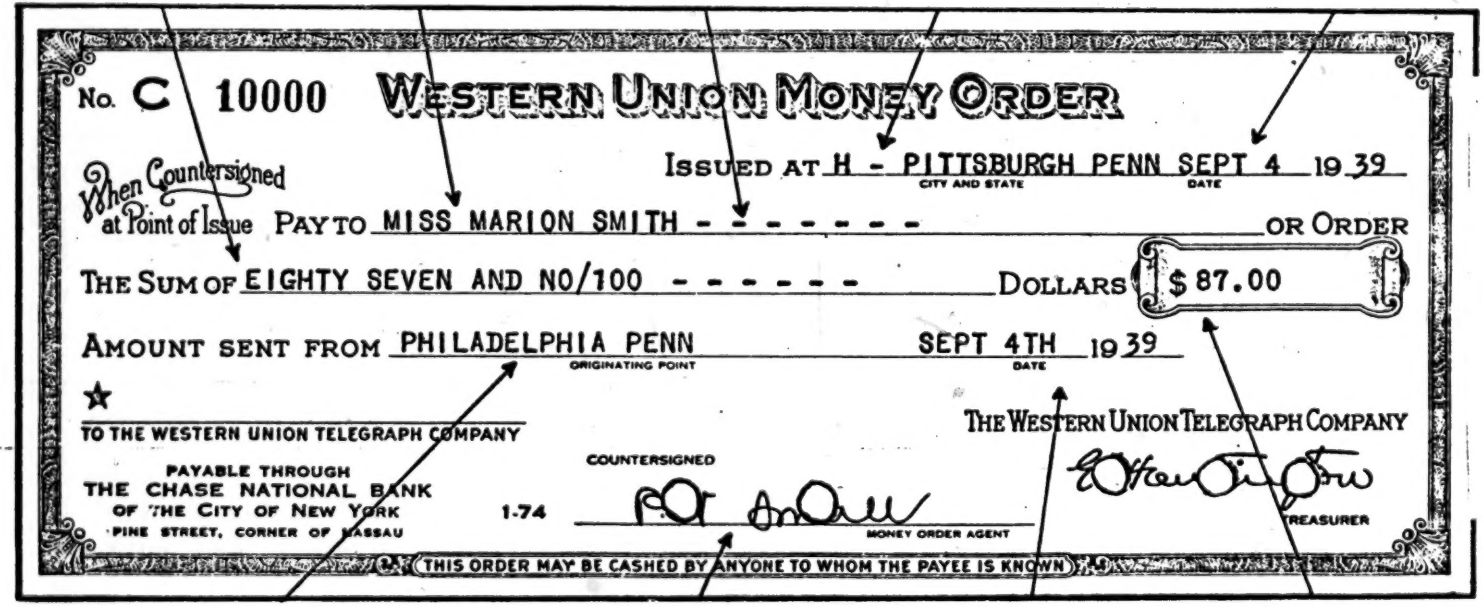
Membership cards	Bank book
Receipted bills	Automobile license
Letters addressed to you	Western Union collect card

or any other documentary evidence you may have.

Bring This Notice With You

THE WESTERN UNION TELEGRAPH COMPANY

FIG. 4—MONEY ORDER DRAFT—FORM 2738


No. C 10000
WESTERN UNION MONEY ORDER
When Countersigned at Point of Issue
ISSUED AT H - PITTSBURGH PENN SEPT 4 1939
CITY AND STATE
DATE
PAY TO MISS MARION SMITH - - - - - - -
OR ORDER
THE SUM OF EIGHTY SEVEN AND NO/100 - - - - - -
DOLLARS
$ 87.00
AMOUNT SENT FROM PHILADELPHIA PENN
ORIGINATING POINT
SEPT 4TH 1939
DATE
TO THE WESTERN UNION TELEGRAPH COMPANY
THE WESTERN UNION TELEGRAPH COMPANY
PAYABLE THROUGH
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
PINE STREET, CORNER OF NASSAU
1-74
COUNTERSIGNED
MONEY ORDER AGENT
TREASURER
THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN

★This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

NOTE—Form 3300-C accompanies this draft when delivered or mailed.

EXHIBIT D

FIG. 13—DRAFT COVERING REFUND OF AN ORDER—FORM 2738

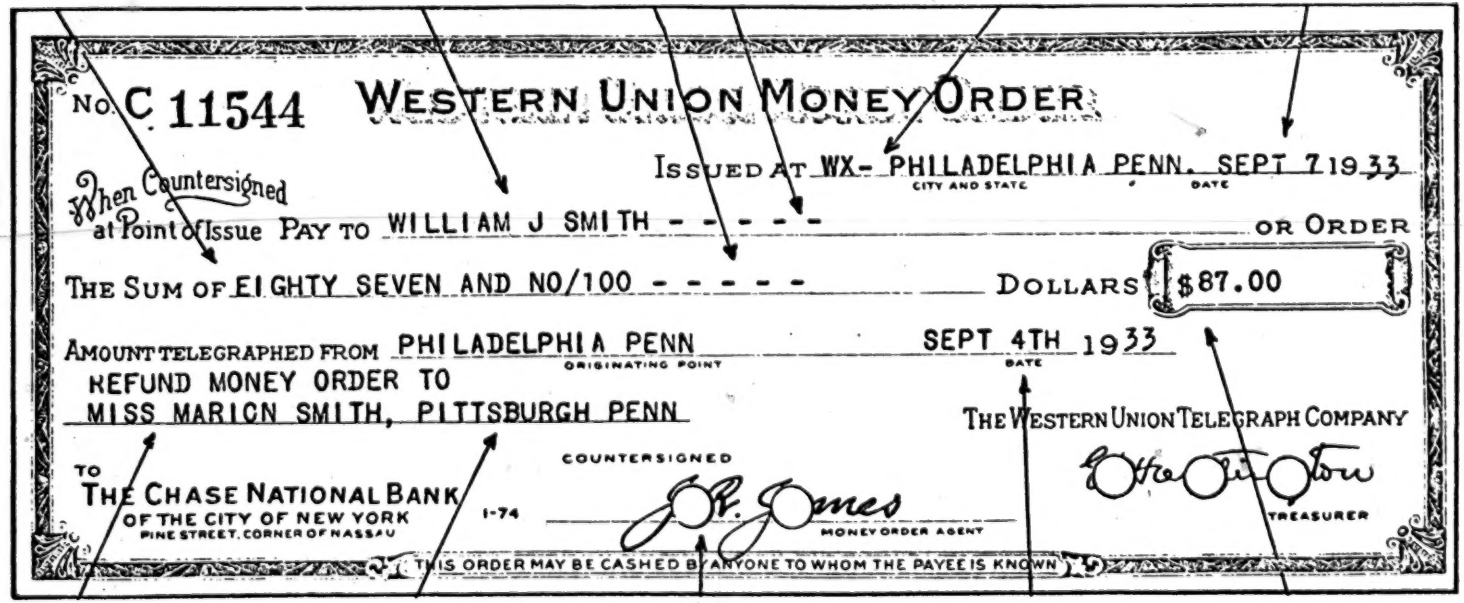

No. C 11544
WESTERN UNION MONEY ORDER
When Countersigned at Point of Issue
ISSUED AT WX- PHILADELPHIA PENN. SEPT 7 1933
CITY AND STATE
DATE
PAY TO WILLIAM J SMITH - - - - -
OR ORDER
THE SUM OF EIGHTY SEVEN AND NO/100 - - - - -
DOLLARS
$87.00
AMOUNT TELEGRAPHED FROM PHILADELPHIA PENN
ORIGINATING POINT
SEPT 4TH 1933
DATE
REFUND MONEY ORDER TO
MISS MARION SMITH, PITTSBURGH PENN
THE WESTERN UNION TELEGRAPH COMPANY
TO
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
PINE STREET, CORNER OF NASSAU
COUNTERSIGNED
1-74
J.R. Jones
MONEY ORDER AGENT
TREASURER
THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN

EXHIBIT E

EXHIBIT F

PENNSYLVANIA ACT OF MAY 2, 1889, P. L. 66, Sec. 1, as amended by Act of July 29, 1953, P. L. 1, P.S. 333

"Whenever the . . . person entitled to any . . . personal property within or subject to the control of the Commonwealth, or the whereabouts of such . . .. person entitled, has been or shall be and remain unknown for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . ."

"Whenever any . . . personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such . . . personal property shall escheat to the Commonwealth."

PENNSYLVANIA FISCAL CODE, ACT OF APRIL 9, 1929, P. L. 343, Section 1310, 72 P.S. 1310

"Whenever any person, firm, association, bank, trust company or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be escheatable by any Act of General Assembly, the Department of Revenue may . . . suggest to the Attorney General that, instead of

proceeding for the escheat of such items . . . the Attorney General apply, by petition, for an order . . . directing the payment of the same into the State Treasury to the credit of the Commonwealth . . . all amounts so paid to be subject to being refunded by petition to the Board of Finance and Revenue."

EXHIBIT G

McKINNEY'S CONSOLIDATED LAWS
OF NEW YORK
ANNOTATED

Book 2½

ABANDONED PROPERTY LAW
Sec. 1309
As amended L 1969, c. 1114, Sec. 1-5
effective May 26, 1969

---

§1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be

deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant to this section. Such payment shall be accompanied

by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1969
No. Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

PROOF OF SERVICE

I, JOSEPH H. RESNICK, Assistant Attorney General of the Commonwealth of Pennsylvania, hereby certify that I am one of the attorneys for the plaintiff, Commonwealth of Pennsylvania, that I am a member of the Bar of the Supreme Court of the United States, and that on the 9th day of March, 1970, I served copies of the foregoing Motion for Leave to File Complaint, and Complaint, and also of the Brief in Support of the Motion for Leave to File Complaint, on each of the parties defendant by depositing such copies, air mail postage prepaid, in a United States Post Office, addressed as follows:

1. State of New York
   (a) Hon. Nelson A. Rockefeller
   Governor of the State of New York
   Albany, N. Y.
   (b) Louis J. Lefkowitz
   Attorney General of the State of New York
   Albany, N. Y.
2. State of Florida
   (a) Hon. Claude R. Kirk, Jr.
   Governor of the State of Florida
   Tallahassee, Fla.
   (b) Hon. Earl Faircloth
   Attorney General of the State of Florida
   Tallahassee, Fla.
3. State of Oregon
   (a) Hon. Tom McCall
   Governor of the State of Oregon
   Salem, Ore.
   (b) Hon. Lee Johnson
   Attorney General of the State of Oregon
4. Commonwealth of Virginia
   (a) Hon. Mills E. Goodwin, Jr.
   Governor of the Commonwealth of Virginia
   Richmond, Va.
   (b) Hon. Robert Y. Button
   Attorney General of the Commonwealth of Virginia
   Richmond, Va.

5. The Western Union Telegraph Company

(a) John M. Evans, Esq.
Vice-President and General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

(b) Peter F. Oates, Esq.
Assistant General Counsel
The Western Union Telegraph Company
60 Hudson Street
New York, N. Y.

JOSEPH H. RESNICK
Assistant Attorney General, Commonwealth of Pennsylvania

SUPREME COURT, U. S.

MAR 13 1970

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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JURISDICTION

The original jurisdiction of the Court is invoked under Article III, Sec. 2 of the Constitution of the United States, and the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

STATEMENT OF THE CASE

The material facts of the controversies which the Commonwealth of Pennsylvania requests this Court to determine are set forth in the Complaint and are reviewed below.

The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York. Western Union is authorized to do business in most of the States of the United States and in the District of Columbia, and prior to divestment on September 30, 1963 of its international operations, was also authorized to do business in certain foreign countries. On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and sales companies, and assumed the obligations of the merged companies.

In addition to its telegraphic message business, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

To the extent that telegraphic money orders of the predecessor companies are involved in these proceed-

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STATEMENT

The Commonwealth of Pennsylvania has filed a Motion for Leave to File Complaint against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, a New York Corporation.

Western Union is joined as a party defendant because the subject matter of the controversies herein consists of moneys received by Western Union for money orders as to which the company has not been able to effect payment after a long passage of time, and the judgment prayed for herein would include an order upon Western Union to deliver the said moneys to one or more of the States, either as an escheat or for custody.

This brief is in support of the motion.

JURISDICTION

The original jurisdiction of the Court is invoked under Article III, Sec. 2 of the Constitution of the United States, and the United States Code, Title 28, Section 1251 (a) (1) and (b) (3).

STATEMENT OF THE CASE

The material facts of the controversies which the Commonwealth of Pennsylvania requests this Court to determine are set forth in the Complaint and are reviewed below.

The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York. Western Union is authorized to do business in most of the States of the United States and in the District of Columbia, and prior to divestment on September 30, 1963 of its international operations, was also authorized to do business in certain foreign countries. On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and sales companies, and assumed the obligations of the merged companies.

In addition to its telegraphic message business, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

To the extent that telegraphic money orders of the predecessor companies are involved in these proceed-

ings, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

In the conduct of its money order service, Western Union uses a number of forms, starting with the "Western Union Telegraphic Money Order" (Complaint, "Exhibit A-1, Face of Money Order", and "Exhibit A-2, Back of Money Order").

The company uses the term "sender" to designate the purchaser of a money order. For the purpose of the Complaint, the term "sendee" is used to designate the person to whom the sender directs the amount of the money order to be paid. The term "sending office" or "office of origin" is used to designate the company office in which the sender purchases the money order; the term "paying office" or "office of destination" is used to designate the company office which is directed to pay the money to the sendee. The term "State of origin" or "place of origin" is used to designate the State or place where the money order is purchased and Western Union receives the money; the term "State of destination" or "place of destination" is used to designate the State or place where the money order directs the amount of the money order to be paid to the sendee.

The procedure observed by Western Union in its telegraphic money order service is as follows:

The sender fills out a money order form at a Western Union sending office and gives it to the company's clerk, together with money in the amount to be paid to the sendee, and the company's charges.

The face of the money order (Complaint "Exhibit A-1") states that the money order is subject to the conditions on its face and on the back thereof.

One of the conditions on the back of the money order is as follows:

"Domestic money orders will be canceled and refund made to the sender if payment cannot be made within 72 hours after receipt at the paying office . . ."

As to other money orders the period after which it will be canceled if payment to the sendee cannot be effected is 5 days or 10 days.

The clerk gives the sender a receipt for the money (Complaint, "Exhibit B").

After a money order is purchased, the clerk at the office of origin sends a telegraphic inter-office message to the company's paying office nearest the sendee, directing payment of the amount of the money order to the sendee.

(In no case is the money itself transmitted from the sending office where it is received to the paying office. To the contrary, the money received by the company remains at the sending office, and is intermingled with moneys collected there for telegrams and other services. The intermingled moneys are used by the sending office for paying any incoming money orders and other authorized cash disbursements of the office. Accumulation of surplus cash, if any, is deposited in a local bank account maintained by the manager in the name of Western Union. Accumulation of excess funds, if any, in this bank is remitted to the Divisional Headquarters Cashier, who

in turn remits to the company Treasurer. In the event the amount of the manager's bank account, together with cash on hand in the sending office, is insufficient to meet the payment of incoming money orders and expenses, the Divisional Headquarters Cashier sends the manager a check to meet the deficit.)

When the paying office receives the telegraphic inter-office message, directing payment of the amount of the money order to the sendee, the clerk at the paying office notifies the sendee, except as otherwise arranged, that a telegraphic money order has been received for payment of money to him, and to call at the paying office to receive the money (Complaint, "Exhibit C"). In some cases, where the sendee is otherwise aware of the money order, notice to him may not be necessary. In a number of other cases, the company attempts to give such notice, but is unsuccessful in so doing.

When the sendee calls at the paying office, he is given a company negotiable draft (Complaint, "Exhibit D"), which he may cash immediately, or take with him for future use. In some cases, at the request of the sender or sendee, the company sends the draft to the sendee.

If the company is unable to contact the sendee, or if, for any other reason, the company is unable to make delivery of a draft to him, then, upon the expiration of 72 hours or other period prescribed by the money order, the money order is canceled by a telegraphic message from the office of destination notifying the office of origin that payment has not

been effected. Once the money order is canceled, the company will not thereafter issue a draft to the sendee or recognize any rights in him under the money order.

Upon cancellation of the money order, the office of origin so notifies the sender, and when he calls at the office of origin, he is given a draft for the refund (Complaint, "Exhibit E"), which he may endorse and cash immediately, or keep for future use. If the company is unable to contact the sender, or if, for any other reason, it is unable to make delivery of a draft to him, the company continues to hold the money for refund to the sender.

Usually the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

In a number of instances of money orders purchased from Western Union on or before December 31, 1962, however, after the sendee has received a draft, it has not been cashed at the paying office or presented at a later date, and in each such case Western Union presently holds the moneys awaiting presentation of the draft.

In a number of other instances, the company has not been able to deliver a draft to the sendee, and after the expiration of the 72 hour period or other applicable period, the company has canceled the money order by a telegraphic message from the office of destination to the office of origin of the money order.

The refund to the sender has usually been accomplished; the sender has received a draft for the refund and has cashed it.

In a number of instances, however, after the sender has called at the office of origin and has received a draft for the refund, it has not been cashed at the office or presented at a later date, and in each such case Western Union presently holds the moneys awaiting presentation of the draft.

In a number of other instances, the company has not been able to deliver a draft for refund to the sender, and the company presently holds the moneys awaiting the sender's request for a refund.

In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than 17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for such money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed the following:

(a) As to 78.1% of the aggregate amount of the money orders examined:

(1) the company had been unable to deliver either money or a draft to the sendee;

(2) the money order had been canceled by a telegraphic message from the office of destination to the office of origin;

(3) the office of origin had been unable to deliver either money or a draft to the sender for the refund;

(4) Western Union still held the money received by it at the office of origin.

(b) As to 21.9% of the aggregate amount of the money orders examined:

(1) drafts had been issued either to the sendee or to the sender for the amount of the refund. (The survey did not show what portion of the drafts had been issued to sendees, and what portion to the senders for the refunds.)

(2) the drafts had not been cashed or later presented for payment;

(3) Western Union still held the money awaiting presentation of the drafts.

Western Union presently holds more than $1,500,000.00 on account of money orders purchased on or before December 31, 1962. Of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in offices of origin in Pennsylvania.

Pennsylvania claims that it is entitled, under the escheat and custody laws, to the amount of $100,000.00 held by Western Union on account of money orders purchased in Pennsylvania. Other States may also claim that they are entitled, under the escheat or custody laws, to the escheat or custody of the amounts

held by Western Union on account of money orders purchased in those States.

Florida asserts that the sendee is the owner of moneys held by Western Union for such money orders, and that where the money order directed that the amount of the money order be paid to a sendee in Florida, that State is the only State entitled under its laws, to the escheat or custody of the unclaimed moneys. Other States may take a like position.

Oregon declares that the sendee may be a creditor beneficiary or donee beneficiary of the money order, and that if the last known address of the sendee is in Oregon, that State is entitled, under its laws, to the escheat or custody of the unclaimed moneys. Other States may take a similar position.

Virginia declares that when a draft has been issued to the sendee or sender, and the company's books and records show the last known address of the payee of the draft to be in Virginia, that State is the State entitled, under its laws, to the escheat or custody of the unclaimed amounts.

Other states may claim as the state in which drafts were issued to the sendee or sender.

New York claims all unclaimed moneys held by Western Union arising from money orders purchased from Western Union up to January 1, 1958, regardless of the State or place of origin or destination of the money orders. As to money orders purchased on or after January 1, 1958, New York asserts claims inconsistent with those of Pennsylvania, Florida, Oregon and Virginia.

This case involves unclaimed moneys held by Western Union for persons entitled thereto under money orders purchased from Western Union in Pennsylvania. However, the questions in this case relate to all unclaimed moneys held by Western Union arising from money orders purchased from the Company.

QUESTIONS INVOLVED

I. Is a justiciable controversy between States warranting the exercise of the Court's original jurisdiction presented by the Complaint?

II. Does *Texas v. New Jersey,* 379 U.S. 674, settle the question of which State will be allowed to escheat or take custody of unclaimed moneys arising from telegraphic money orders?

III. Should a rule be adopted that the only State entitled to the escheat or custody of unclaimed moneys arising from telegraphic money orders is the State of origin (State of purchase) of the money order?

SUMMARY OF ARGUMENT

I. The purpose of this proceeding is to obtain a judicial determination of controversies between States.

Several States claim the right to escheat or take custody of the same intangibles, obligations of Western Union arising from telegraphic money orders purchased from the Company in one State for the payment of moneys to persons either in the same State or in other States. The controversies exist because the Constitution of the United States prevents more than one State from escheating or taking custody of a given item of property.

Since the controversies are between States they are justiciable controversies within the purview of Article A III, Section 2 of the Constitution of the United States, and Title 28, Section 1251 of the United States Code.

II. Pennsylvania claims the right of escheat or custodial taking of these obligations as the State of origin of the telegraphic money orders; Florida and Oregon claim the right as the State of destination of the telegraphic money orders; Virginia claims where drafts have been issued in that State to the sendees of the money orders for the amount thereof. New York claims as the State of domicile of the Company.

In order to determine which of the States has the right to the escheat or custodial taking of the intan-

gibles where the telegraphic money order was purchased in one State directing payment to a sendee in another State, it is necessary that a rule or rules be formulated to apply to such telegraphic money order transactions.

III. In *Texas v. New Jersey*, the Court adopted rules for the determination of the priority of the right of escheat between States claiming the same intangibles, the basic rule adopted being that where the last known address of the creditor is shown on the books and records of the debtor, the State of last known address of the creditor has the primary right of escheat or custodial taking. In that case, the creditor was identified on the books and records of the debtor. The rule in that case cannot be applied to telegraphic money order transactions, which differ from the debts in the above case. The telegraphic money orders are multi-phased and are multi-state as well. The identity of the creditor is not shown on the debtor's books and records. Each State, therefore, applies its own laws to determine the identity of the creditor. Because one phase may be in one State and another phase may be in another State, each State may look to the phase of the telegraphic money order in that State to determine who is the creditor. Since the laws of the States differ, there is no one rule for the identification of the creditor.

Therefore, a rule is required which is not dependent upon the identity of the creditor, but upon the nature of the telegraphic money order transaction, a rule which can be applied to every telegraphic money order transaction.

Western Union's records show the State of origin of every telegraphic money order. The moneys deposited with Western Union for the telegraphic money order are received by the Company in every case in the State of origin. In almost 80% of the telegraphic money orders here involved, the Company was unable to effect payment to the sendee, and under the terms of the telegraphic money order, the money order was canceled and refund required to be made to the sender in the State of origin.

A rule giving the primary right of escheat or custodial taking to the State of origin tends to distribute escheats to the States in proportion to the commercial activities of their residents, and would return the moneys to the States in which the moneys were received by Western Union. Such a rule is fair and equitable.

It is, therefore, submitted that the following rule should be adopted:

> "The State of origin of a telegraphic money order, as shown by Western Union's records, is the only State entitled to the escheat or custody of unclaimed moneys arising from the money orders, to the extent of that State's power under its own laws to escheat or to take custodially."

ARGUMENT

I. THE COMPLAINT PRESENTS A JUSTICIABLE CONTROVERSY BETWEEN STATES

The Complaint sets forth that Pennsylvania has the right, under its laws,[1] to the escheat and custody of intangibles arising from the purchase in Pennsylvania of telegraphic money orders, where the amounts received by Western Union have not been paid to the person entitled and have been unclaimed for more than seven years. New York claims such right under its Abandoned Property Law.[2] The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States prevents more than one State from escheating or taking custody of a given item of property. *Texas v. New Jersey,* 379 U.S. 674.

There is, therefore, a justiciable controversy between Pennsylvania and New York within the meaning of Article III, Sec. 2, of the Constitution of the United States and Title 28, Sec. 1251 (a) (1) of the United States Code.

Florida claims that where telegraphic money orders direct payment to a person in Florida, and such moneys are unclaimed, Florida is the State which is

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[1] Act of May 2, 1889, P. L. 66, Sec. 3, as amended by Act of July 29, 1953, P. L. 986, Sec. 1; Pennsylvania Fiscal Code, Act of April 9, 1929, P. L. 343, Sec. 1310. (See appendix).

[2] New York Abandoned Property Law, Sec. 1309. (See appendix).

entitled under its laws to the escheat or custody of the moneys. Therefore, as to telegraphic money orders purchased in Pennsylvania and destined to persons in Florida, the controversy includes Florida.

Oregon makes a similar claim on the ground that the person to whom the money order directs the money to be paid is a donee beneficiary or creditor beneficiary of the money order. As to telegraphic money orders purchased in Pennsylvania, but destined to persons in Oregon, the controversy is between Pennsylvania, New York and Oregon.

Virginia asserts that when Western Union gives a draft to the person to whom the telegraphic money order directs payment to be made, the State in which the draft is delivered is entitled to the escheat or custody of the unclaimed moneys held for payment of the draft. As to telegraphic money orders purchased in Pennsylvania for which drafts were delivered in Virginia by Western Union, the controversy is between Pennsylvania, New York and Virginia.

While the Complaint is directed to telegraphic money orders purchased in Pennsylvania, the same questions and problems exist as to unclaimed moneys held by Western Union arising out of telegraphic money orders purchased in all of the States and foreign countries in which Western Union has sold telegraphic money orders.

The controversy between Pennsylvania and New York, and the concomitant controversies between those States and Florida, Oregon and Virginia respectively, as well as the controversies involving

States which may, with leave of this Court, intervene in these proceedings, constitute justiciable controversies warranting the exercise of the Court's original jurisdiction.

In *Texas v. Florida,* 306 U.S. 398, 405, in deciding whether the controversy there warranted the exercise of original jurisdiction, this Court looked to the common law and equity for guidance. The Court said in that case:

> "Our constitutional authority to hear the case and grant relief turns on the question whether the issue framed by the pleadings constitutes a justiciable 'case' or 'controversy' within the meaning of the constitutional provision, and whether the facts alleged and found afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, which are guides to decision of cases within the original jurisdiction of this court.
>
> 407. "When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy', within the meaning of the Constitutional provision; and when the case is one prosecuted between States which are the rival claimants, and the risk of loss is shown to be real and substantial, the case

> is within the original jurisdiction of this Court conferred by the Judiciary Article."

In the present case, the facts averred in the Complaint likewise afford an adequate basis for relief. The exercise by this court of its original jurisdiction will prevent the loss which might otherwise result from the prosecution of rival but mutually exclusive claims. Unless this Court exercises such jurisdiction, the States will be without a forum to determine which of the rival but mutually exclusive claims is the claim which may be enforced.

In *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71, a case in which Pennsylvania failed to invoke the original jurisdiction of the Court and obtained a judgment of escheat in its own courts, this Court reversed the judgment because New York made a like claim to the same intangible property. This Court declared that since there was a controversy between the two States, application should have been made by Pennsylvania for the exercise of this Court's original jurisdiction. The Court said (79):

> "This makes it imperative that controversies between different States over their right to escheat intangibles be settled in a forum where all the States that want to do so can present their claims for consideration and final authoritative determination. Our Court has jurisdiction to do that."

The controversies which were referred to were left for future determination, and the Court said:

> "Nor need we, at this time, attempt to decide the difficult legal question presented when many

> different States claim power to escheat intangibles involved in transactions taking place in many States. It will be time enough to consider these complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination."

The questions which that case left for future decision are presented in the instant proceeding.

In *Texas v. New Jersey et al.*, 371 U.S. 873, there was a controversy, as in *Western Union v. Pennsylvania,* supra, between a number of States as to the right to escheat the same intangibles, and one of the claimant States, Texas, filed a Motion in this Court for Leave to file Bill of Complaint. This Court granted the Motion in the exercise of its original jurisdiction. After hearing, an opinion was delivered in *Texas v. New Jersey,* 379 U.S. 674, supra.

In *Connecticut Mutual Life Ins. Co. v. Moore,* 333 U.S. 541, 555, Justice Frankfurter said, in a dissenting opinion:

> "It is precisely for the settlement of such controversies among the several States that the Constitution conferred original jurisdiction upon this Court."

The present case involves the same kind of controversy as there was between States in the Western Union case, and in the case of *Texas v. New Jersey*—a controversy between States as to their respective rights of escheat or custody of the same intangibles.

As in those cases, so in this case, only this Court can determine the controversy.

II.

THERE IS NO PREVAILING RULE BY WHICH THE CONTROVERSIES IN THIS CASE CAN BE DETERMINED, AND THE ADOPTION OF A RULE IS NECESSARY

In *Texas v. New Jersey*, 379 U.S. 674, supra, several States claimed the right to the escheat or custody of the same intangibles. Since the Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating or taking custody of the same given item of property, and since the States separately are without constitutional power to provide a rule to settle such an interstate controversy and there is no applicable federal statute, the Court in that case adopted the following rules to settle the question of which State should be allowed to escheat or take custody of the intangibles in that case:

> 1. Each item of property as to which a last known address of the person entitled thereto is shown on the books and records of the debtor, is subject to escheat or custodial taking only by the State of the creditor's last known address, as shown on the debtor's books and records, to the extent of that State's power under its own law to escheat or to take custodially.
>
> 2. Each item of property as to which there is no address of the person entitled shown on the books and records of the debtor, is subject to escheat or custodial taking by the State in

> which the debtor was incorporated, . . ., subject to the right of any other State to recover such property from the State of the debtor's incorporation, upon proof that the last known address of the creditor was within such other State's borders.
>
> 3. Each item of property as to which the last known address of the person entitled as shown on the books and records of the debtor, is in a State, the laws of which do not provide for escheat or custodial taking, is subject to escheat or custodial taking by the State in which the debtor was incorporated, . . . subject to the right of the State of the last known address to recover the property from the State of incorporation of the debtor, if and when the law of such other State makes provision for escheat or custodial taking of the property.

In that case, the creditor was identified on the books of the debtor, and all that was necessary was to determine his last known address, as shown on the books and records of the debtor.

In the present case, the identity of the creditor cannot be determined by a mere reference to the debtor's books and records, because the obligations arising from telegraphic money orders are different from obligations arising from other transactions.

Telegraphic money order transactions have multiple phases, and such phases may be in different States. Under the laws of one state, one phase may be looked to to determine who is the creditor, while

under the laws of another State, another phase may be looked to for such determination. When two phases occur in two separate States, and under the laws of the State of the first phase, one person is the creditor, while under the laws of the State of the second phase, another person is the creditor, the identity of the creditor cannot be said to be shown on the books and records of the debtor, and, consequently, it cannot be said that the last known address of the creditor is shown on the books and records of the debtor. Under these circumstances, the rule in *Texas v. New Jersey* is inapplicable.

As said by the California Law Revision Commission in "Recommendations Relating to Escheat", submitted to the Governor of California in 1967 (page 5):

> "The opinion (in Texas v. New Jersey) indicates that the creditor was identified in each instance . . . Thus, the Supreme Court did not have before it the problems that arise from uncashed travelers checks and money orders . . . Consequently, the rules formulated by the Court do not adequately cover these problems.
>
> "It usually is impossible to apply literally to such instruments the basic rule stated in Texas v. New Jersey (escheat to the State of obligee's last known address, as shown on the obligor's records)."

Because of the difference between the debts in *Texas v. New Jersey* and the intangibles in the present case, the rules stated in *Texas v. New Jersey* are inapplicable here.

To hold that since the creditor is not identified, no address of the person entitled in this case is shown on the books and records of Western Union and that, therefore, the second part of the rule in *Texas v. New Jersey* (escheat to the State of domicile of the obligor) applies here, would tend to frustrate the purpose of the Supreme Court in *Texas v. New Jersey* "to distribute escheats among the States in the proportion of the commercial activities of their residents".

New York would thereby obtain a windfall of more than $1,500,000.00, to the exclusion of all other States, despite the fact, as stated by the California Commission in its "Recommendations Relating to Escheat" (page 8), that "most of the money orders are purchased near the purchaser's home".

The principles of equity and fairness among the States require an escheat rule which is responsive to the problems and nature of telegraphic money orders.

III.

THE FOLLOWING RULE IS SUBMITTED: "THE STATE OF ORIGIN OF A TELEGRAPHIC MONEY ORDER, AS SHOWN BY WESTERN UNION'S RECORDS, IS THE ONLY STATE ENTITLED TO THE ESCHEAT OR CUSTODY OF UNCLAIMED MONEYS ARISING FROM THE MONEY ORDERS, TO THE EXTENT OF THAT STATE'S POWER UNDER ITS OWN LAWS TO ESCHEAT OR TO TAKE CUSTODIALLY"

The basic controversy here is between the State of origin and the State of destination of telegraphic money orders. Pennsylvania claims the right, under its own laws, to escheat or take custodially the intangibles herein, aggregating approximately $100,000.00, arising from telegraphic money orders purchased in Pennsylvania, and as to which Pennsylvania is, therefore, the State of origin. Florida claims the same right, under its own laws, in those cases in which it is the State of destination; Oregon also claims the same right, under its own laws, in those cases in which it is the State of destination, on the ground that the sendee is a donee or creditor beneficiary; Virginia asserts the right, under its own laws, when the sendee in Virginia has received a draft for the amount of the telegraphic money order.

Except where the laws of the State of origin and the State of destination have similar laws, that is, that the State of origin is the State entitled in all cases

to the escheat or custodial taking of the intangibles, or, that the State of destination is entitled in all cases to the escheat or custodial taking of the intangibles, there is such controversy between the State of origin and the State of destination of the telegraphic money orders.

While the instant proceeding concerns only telegraphic money orders as to which Pennsylvania was the State of origin, the controversy relates to the entire sum of over $1,500,000.00 held by Western Union on account of money orders purchased from it on or before December 31, 1962.

Since, under the laws of the State of Pennsylvania, the State of origin, the sender is the creditor, and under the laws of Florida, Oregon and Virginia, the sendee or the payee of a draft is the creditor, and there is an impasse as to the identity of the creditor, New York claims that, as the State in which Western Union was incorporated, it is entitled to the said intangibles, under the rule in *Texas v. New Jersey*, supra.

Where one State asserts that under its laws the sender is the creditor, and that under its own laws it is, as the State of the sender, entitled to the escheat or custodial taking of the intangibles, and another State asserts that under its laws the sendee is the creditor, and that under its laws it is the State entitled to the escheat or custodial taking of the intangibles, when the address of the sendee is in that State —so that the States come to different conclusions, under their respective laws as to the identity of the

creditor and the right of escheat or custody—the rule enunciated in *Texas v. New Jersey,* supra (that the State of the last known address of the creditor, as shown by the debtor's books and records, has the primary right to the escheat or custodial taking of the intangibles), cannot be applied.

Quoting again from "Recommendations Relating to Escheat", submitted by the California Law Revision Commission to the Governor of California:

> "The opinion in Texas v. New Jersey indicates that the creditor was identified in each instance . . . Thus, the Supreme Court did not have before it the problems that arise from uncashed travelers checks and money orders. Consequently, the rules formulated by the Court do not adequately cover these problems.
>
> "It usually is impossible to apply literally to such instruments the basic rule stated in Texas v. New Jersey (escheat to the State of obligee's last known address, as shown on the obligor's records)."

Yet equity and fairness dictate that a rule be adopted which will give the primary right to one of these two States, because only by such rule can escheat be distributed among the States "in the proportion of the commercial activities of their residents". *Texas v. New Jersey,* supra.

A rule which gives the primary right of escheat or custody to the State of origin might seem to take the right away from a State which, under its own laws, claims such right as the State of destination, but this

will be substantially compensated for by giving the latter State the unclaimed moneys arising from telegraphic money orders as to which it was the State of origin, although, under its own laws, but for the rule, it would have no such right as the State of origin. Conversely, of course, a rule which would give the primary right of escheat or custody to the State of destination might seem to take the right away from a State which, under its own laws, claims such right as the State of origin, but again, this would be substantially compensated for by giving it the unclaimed moneys as to which it is the State of destination, although, under its own laws, but for the rule, it would have no such right as the State of destination.

Either of these two rules would be equitable to all the States, and would distribute escheats among the States in the proportion of the commercial activities of their residents. However, a rule giving the primary right to the State of origin is more in accord with the nature of telegraphic money orders, the contractual provisions thereof, the surrounding circumstances and the events following the purchase of telegraphic money orders.

The telegraphic money order is purchased in the State of origin, and the contract between the sender and Western Union is made there. The company is paid there for its services, and the moneys involved are deposited there with the company. The moneys deposited with Western Union are not sent out of that State, but are mingled there with other funds of the company. Under the terms of the telegraphic money order, if payment to the sendee is not effected

within 72 hours or other specified period, the money order is canceled, and the office of origin, in the State of origin, is notified to make refund to the sender.

The survey made by Western Union of more than 17,000 telegraphic money orders as to which Western Union still holds the amount deposited shows that in 78.1% thereof there was not even the issuance of a draft, and the money orders were canceled, leaving in effect only the duty of the company to refund the money to the sender in the State of origin. It is reasonable to assume that at least one-half of these drafts were to sendees in the State of origin.

Therefore, close to 90% of the unclaimed moneys held by Western Union represents moneys to which the sender in the State of origin is entitled, and the rule suggested would return the moneys held by Western Union to the State in which it was received, and in which every essential element of the transaction took place.

As to drafts, the effect thereof must be determined either by the laws of the State of origin, where the contract was entered into by the company and the sender of the money order, or by the laws of the State in which the draft was issued. Under the laws of Pennsylvania and a number of other States, a draft is not payment if it itself is not paid, unless it has been expressly accepted as payment. Other States hold the contrary view, that the delivery of a draft constitutes payment, unless payment of the draft itself is refused. See 70 *C.J.S.*, Title, "Payment", Sec. 23a, 104a.

A rule giving the right of escheat or custodial taking to the State of origin of the telegraphic money order will be in conformity with the aim expressed in *Texas v. New Jersey,* supra, to distribute escheats among the States "in the proportion of the commercial activities of their residents", even if a draft was issued in the State of destination. Whatever escheats will be denied to the State in which the drafts were issued will be compensated for by granting the right of escheat or custodial taking to such States where it was the State of origin and no drafts were issued there to the sendees.

Like the rule in *Texas v. New Jersey,* the suggested rule "involves a factual issue simple and easy to resolve and leaves no legal issue to decide". There will be no need to attempt to reconcile or choose between the laws of the State of origin and the State of destination for the determination of the identity of the delivery of a draft by Western Union.

Furthermore, since the records of Western Union show the State of origin of every money order, the rule will, without exception, cover every item as to which Western Union holds the unclaimed moneys and no State will be deprived of its fair share by a mere failure of Western Union to obtain an address of the sender or sendee.

A rule based upon the addresses of the sender or sendee would not have such complete application, because in many instances Western Union never obtained such addresses (Complaint, Par. 14).

Again, a rule which would give the right of escheat or custody to the last known address of the payee of

a draft would affect only 21.9% of the items involved, and would require a different rule as to the 78.1% for which drafts were not issued. The rule that the State of origin of a telegraphic money order is the only State entitled will not require such a second rule.

Since the suggested rule will return the moneys to the State in which Western Union received it, the persons who deposited the moneys with Western Union will in most cases find it more convenient if they later claim their money, to present and pursue their claims in the same State in which they deposited the moneys with Western Union.

While New York has amended Sec. 1309 of the Abandoned Property Law to provide one rule for money orders purchased before January 1, 1958, and another rule for money orders purchased on and after that date, there is no need for such a differentiation, and the suggested rule is equally applicable to telegraphic money orders issued before or after January 1, 1958.

CONCLUSION

Every consideration taken into account by this Court in formulating the rule adopted in *Texas v. New Jersey* applies with equal force to the above suggested rule.

1. As stated above, the suggested rule involves a factual issue, simple and easy to resolve, leaving no legal issue to be decided;

2. It tends to distribute the unclaimed moneys among the States in proportion to the purchase of telegraphic money orders in the States;

3. It is conducive to needed certainty;

4. It dispenses with technical concepts, such as definition of a "creditor" or "payment";

5. Administration and application of escheat and custodial laws will be simplified;

6. It is a rule to which all States may refer with confidence;

7. It is fair and equitable.

It is submitted that the suggested rule giving the sole right of escheat or custody to the State of origin of a telegraphic money order, when the amount thereof is unclaimed, is a rule which is consistent with the guides followed by this Court in *Texas v. New Jersey.*

Respectfully submitted,

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APPENDIX

PENNSYLVANIA ACT OF MAY 2, 1889, P. L. 66, Sec. 1, as amended by Act of July 29, 1953, P. L. 986, Sec. 1, 27 P.S. 333

"Whenever the . . . person entitled to any . . . personal property within or subject to the control of the Commonwealth, or has been or shall be and remain unknown for the period of seven successive years, such . . . personal property . . . shall escheat to the Commonwealth . . ."

"Whenever any . . . personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such . . . personal property shall escheat to the Commonwealth."

PENNSYLVANIA FISCAL CODE, ACT OF APRIL 9, 1929, P. L. 343, Section 1310, 72 P.S. 1310

"Whenever any person, firm, association, bank, trust company or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be escheatable by any Act of General Assembly, the Department of Revenue may . . . suggest to the Attorney General that, instead of proceeding for the escheat of such items . . . the At-

torney General apply, by petition, for an order . . . directing the payment of the same into the State Treasury to the credit of the Commonwealth . . . all amounts so paid to be subject to being refunded by petition to the Board of Finance and Revenue."

McKINNEY'S CONSOLIDATED NEWS
OF NEW YORK
ANNOTATED
BOOK 2½

ABANDONED PROPERTY LAW
Sec. 1309

As amended L 1969, c. 1114, Sec. 1-5
effective May 26, 1969

§1309. Uncashed travelers checks and money orders

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, shall be deemed abandoned property if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

2. Any amount held or owing by any such organization for the payment of a money order, or for the payment of any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, nineteen hundred thirty and prior to January first, nineteen hundred fifty-eight shall be

deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years.

3. Any amount held or owing by any such organization for the payment of such money order, or any instrument drawn or issued to effect the payment thereof, sold by such organization on or after January first, ninteen hundred fifty-eight shall be deemed abandoned property when such amount has remained unpaid to the rightful owner thereof for seven years, and either

(a) the last known address of the purchaser of such money order according to the records of such organization is located within this state and no instrument has been drawn or issued to effect the payment thereof, or

(b) such address is located within this state and an instrument has been drawn or issued to effect such payment, or

(c) such address cannot be obtained from the records of such organization and an instrument to effect such payment has been drawn or issued in this state, or

(d) such address cannot be obtained from the records of such organization and no instrument to effect such payment has been drawn or issued.

4. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all property deemed abandoned pursuant

to this section. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may require.

5. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amounts so paid, and after audit the state comptroller shall pay the same.